IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3854 of 1998

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DILIP SAGAR

Versus

DEPUTY GENERAL MANAGER

Appearance:

MS SM AHUJA for Petitioner No. 1

MR PV NANAVATI for Respondent No. 1-2

MR VIBHUTI NANAVATI for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 13/08/2004

ORAL JUDGEMENT

1.0 By this petition the petitioner has challenged the order dated 26.9.1997 passed by the Disciplinary Authority-Deputy General Manager, and also the order of appellate authority dated 6.12.1997 passed by the

General Manager confirming the order of dismissal passed by the Disciplinary Authority.

2.0 The petitioner was serving as a Clerk in Syndicate Bank, Vina Branch, Nadiad. He was originally appointed as Peon on 21.10.75 in Syndicate Bank, Paldi Branch. Thereafter he had appeared in the examination for the post of Clerk in which he had succeeded. In pursuance of the same he was appointed as a clerk on 21.2.1984 in Dasaj Branch. Thereafter he was transferred to Ashram Road branch of the respondent Bank on 10.6.1989.

2.1 The petitioner has been maintaining his SB Accounts being (i) A-29 and (ii) 8264 at the Ashram Road Branch of the respondent Bank. During the period between 19.2.1994 and 21.2.1994 the petitioner caused crediting of Rs.31,818 to his said accounts a sum of Rs.31,818.03 being the proceeds of certain clearing instruments. Thereafter, during the period between 19.2.1994 and 2.3.1994, the petitioner withdrawn Rs.1000/- on 19.2.1994, Rs.9000/- on 2.3.1994, Rs.16500/- on 29.2.1994 and Rs.11000/- on 2.3.1994 from his aforesaid accounts.

2.2 During January 1995 the Ashram Road Branch of the respondent bank received a complaint from one Ms Madhu Jain of New Delhi, alleging that Dividend warrant No.003911 issued in her name by M/s Vinyl Chemicals (India) Ltd., Bombay was encashed by another person through Ashram Road Branch, Ahmedabad and demanded refund of the said amount. Therefore, the respondent bank remitted Rs.159/- to Ms Madhu Jain by debiting "DW wrongly collected Account".

2.3 On 15.6.1995, observing certain clearing credits made into the SB accounts of the petitioner, the respondent Bank requested the petitioner to furnish full particulars of the same. The petitioner, by letter dated 19.6.1995, submitted details of 207 divident/interest warrants/refund orders purportedly issued by 9 Public Limited Companies in favour of various persons, the accounts of which were credited to the petitioner's SB Accounts. In the said letter the petitioner has also confirmed that dividend warrant No.003911 issued by M/s Vinyl Chemicals (India) Ltd., for Rs.150/- is also one of the instruments, the proceeds of which were credited to the SB account of the petitioner. On 23.6.1995 the petitioner remitted Rs.10200/- for credit of his SB Account No.A-29 and Rs.21,200/- for credit of his SB account No.8264

maintained at the said branch.

2.4 On 24.6.1994 the respondent bank debited Rs.10,129.98 to the SB Account No.A-29 and Rs.21,188.05 to the SB Account No.8264 of the petitioner and credited the same to the suspense account to meet the claims from the payees of the respective interest/divident warrants/refund orders, the amounts of which were got credited to the SB account of the petitioner.

2.5 In July 1995, the Ashram Road Branch of the petitioner received another complaint from one Ms Vanita R. Ghetia of Upleta, Rajkot, alleging that the refund order No.574999 issued by M/s Birla Ericsson Optical Ltd., for Rs.1000/- was encashed at the branch and has demanded refund of the said amount. On verification it was revealed that the said instrument was also got credited to the SB account of the petitioner.

2.6 It was further revealed that the SB ledger sheet pertaining to his SB Account No.A-29 for the period from 25.11.1993 and 1.9.1994 was found missing from the branch records and therefore the respondent Bank had to reconstruct the same with the help of other relevant records. During this period, an amount of Rs.10,129.98 was credited to the SB account of the petitioner being the proceeds of certain interest/ dividend warrants/refund orders issued in favour of certain third parties.

2.7 On further investigation it was found that though the interest/divident warrants/ refund orders mentioned by the petitioner in his letter dated 19.6.1995 said to be issued by 9 companies in favour of others residing in various places were crossed "A/c Payee" and "not negotiable", the petitioner managed to get collected the proceeds thereof for credit of his account by resorting to fraudulent means. The bank has therefore come to the conclusion that since the petitioner was neither the payee nor the relevant instruments would have been endorsed in his favour because of their restrictive crossings, he has committed an offence of "conversion" of the monies belonging to some one else. Under the circumstances the bank alleged that the petitioner has committed an act of "gross misconduct" within the meaning of clause no.19.5 of Bipartite Settlement.

2.8 In view of the above, a chargesheet was issued

to the petitioner on 12.10.1995. Along with the petitioner two other officers of the bank were also chargesheeted for the alleged misconduct. The petitioner submitted his reply to the said chargesheet denying all the allegations. However, since the Disciplinary Authority was not satisfied with the explanation of the petitioner, a departmental inquiry was held against the petitioner. The petitioner was given the opportunity of examining the witnesses and cross-examining the management witnesses. the petitioner was also provided the defence representative Shri B.K. Karkara on behalf of the management who is an employee of the Bank.

2.9 The Inquiry Officer, after inquiry, submitted his report on 16.10.1996 holding that the charges levelled against the petitioner have been proved beyond reasonable doubt. The petitioner submitted his written submissions against the findings of the Inquiry Officer on 16.12.1996. Thereafter, after hearing the petitioner, the Disciplinary Authority passed order dated 26.9.1997 dismissing the petitioner from the services of the bank with immediate effect.

2.10 Against the said order the petitioner preferred an appeal before the Appellate Authority ie. General Manager (P), Head Office, manipal. The Appellate Authority, vide order dated 6th December 1997 dismissed the said appeal. It is against the aforesaid orders the present petition has been filed.

3.0 Ms Ahuja, learned counsel for the petitioner submitted that the petitioner has been falsely roped in the alleged misconduct. According to the petitioner, the 207 instruments were credited by one Shri Jagdish Modi without the knowledge of the petitioner in his Savings Bank Account. She submitted that merely because the ledger sheet of account No.A/29 of the relevant period could not be found, it cannot be said that the petitioner has tried to destroy any of the records of Account No.A/29 as alleged.

3.2 Learned counsel further submitted that one Mr. M.R. Shah, another employee of the bank had cleared the instruments even though they wer A/c Payee in collusion with one Jagdish Modi. She has also pointed out that in similar cases only minor punishment of stoppage of increments was imposed and the punishment imposed upon the petitioner is very harsh.

3.3 She further submitted that during the 22 years

of service there was no adverse remark against the petitioner and therefore the punishment of dismissal from service could not have been imposed upon the petitioner.

4.1 Mr. PV Nanavati, learned counsel for the respondents submitted that the Inquiry Officer has fully and properly scrutinized the relevant material before him before recording the findings on the charges levelled against the petitioner. Reasonable opportunity was afforded to the petitioner during the course of inquiry.

4.2 The Inquiry Officer has clearly recorded a finding of fact that the petitioner has fraudulently credited the proceeds of the instrumetns in question and derived undue/unlawful pecuniary advantage in detriment to the intersts of the bank.

4.3 The Inquiry Officer has also recorded a finding that the petitioner has destructed the bank record to suppress his fraudulent act and exposed the bank to unnecessarylitigation. The said act of the petitioner constitued an act of "gross misconduct" within the meaning of clause no.19.5 of Bipartite Settlement. He therefore submitted the petitioner has not made out any case for interference by way of the present petition.

5.0 I have heard the learned counsel for the respective parties extensively and gone through the entire report of the Inquiry Officer and other relevant record. From the record it is clear that the Enquiry Officer has followed all the rules and procedures prescribed while conducting the inquiry. The Inquiry officer has judiciously analysed all the evidences that have been adduced during the enquiry by both the parties. The Inquiry Officer has observed that there is enough oral and documentary evidence on record to show that the petitioner had indulged in acts of fraud and derived undue pecuniary advantage in detriment to the interest of the bank and that the petitioner had indulged in destruction of the bank records to suppress his fraudulent acts.

5.2 The contention that one Mr. Jagadish Modi who is reported to be known to the petitioner had deposited 207 isntruments into the SB Account of the petitioenr without his knowledge is totally unbelievable.

5.3 There is nothing on record to show that the

petitioenr paid the amount to Shri Modi, whereas there is sufficient evidence to show that the petitioner received the amounts of said 207 instruments.

5.4 There is also sufficient reason to believe that the petitioner is responsible for the destruction of SB ledger sheet pertaining to his SB Account No.A/29 for the period between 25.11.1993 and 1.9.1994.

5.5 Except the petitioner, no other person will have any benefit from such destruction of SB ledger sheet pertaining to the account of the petitioner.

5.6 Being a responsible employee of the Bank, the petitioner should not have resorted to commit fraud for deriving undue pecuniary benefit to him. Looking to the facts and circumstances, the Inquiry Officer has rightly come to the conclusion that the bank being a financial isntitution dealing with public money cannot afford to continue to employ the dishonest employee, failing which the bank's image might suffer and the public will lose confidence in the bank.

5.7 I do not find any reason to differ from the conclusion reached by the respondent authorities to substitute the penalty imposed upon the petitioner.

6.1 Learned counsel for the petitioner has relied upon a decision of the Supreme Court in the case of Union of India Vs. K.A. Kittu and others,reported in (2001)1 SCC 65. In that case the Supreme Court upheld the decision of the Tribunal which set aside the report of the Inquiry officer on the ground that there was no felling during the period of the delinquent's posting as Cardamom Settlement Officer and there was no loss of revenue during that period. Thus, in that case there was a clear finding of the Tribunal that the delinquent was not guilty of the charges levelled against him, whereas in the present case there is nothing to point out that the findings of the Inquiry Officer are perverse. Therefore the aforesaid decision is not helpful to the petitioner.

6.2 Learned counsel for the petitioner next relied upon a decision of the Supreme Court in the case of Sher Bahadur Vs. Union of India, reported in (2002) 7 SCC 142. In the said decision the Supreme Court held that the requisite evidence must link the charged officer with the alleged misconduct and merely stating in the enquiry report that "in view of oral, documentary and circusmtantial evidence as adduced in the enquiry", is not sufficient. In the present case

the Inquiry Officer has clearly recorded his finding of fact and clearly established that 207 instruments of various companies issued in favour of different parties were credited to his account unauthorisedly. The guilt of the petitioner has been proved beyond doubt and therefore, no reliance can be placed on the aforesaid decision.

6.3 Learned counsel for the petitioner next relied upon a decision of the Supreme Court in the case of Dev Singh Vs. Punjab Tourism Development Corporation Ltd. and Another, reported in (2003) 8 SCC 9. In that case the Supreme Court held that in case of misplacement of an office file, in absence of any ulterior motive, punishment of dismissal therefor would shock judicial conscience and in such case the court can mould the relief. In the present case, SB ledger sheet pertaining to the SB Account No.A-29 of the petitioner for the period of alleged misappropriation is found missing. The finding of the Inquiry Officer in this regard is positive and therefore it cannot be said that there was no ulterior motive on the part of the petitioner. Therefore, the decision of the aforesaid case would not be of no assistance to the petitioner.

6.4 Learned counsel for the petitioner next relied upon a decision in the case of Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and others, reported in (2001) 1 SCC 182. In the said case show cause notice was issued to the delinquient and the same was subsequently treated as chargesheet. Documents were not supplied to him despite requests and even inspection of some of the documetns was denied to him and without affording an opportunity of hearing the enquiry officer gave the finding that the charges stood proved. Therefore the High Court set aside the consequential dismissal order on the ground that there was miscarriage of justice and the Supreme Court confirmed the said decision. In the present case, reasonable opportunity was afforded to the petitioner and there is no allegation that relevant documents were not supplied to him. Therefore, no support can be taken from the aforesaid decision by the petitioner.

7.0 As against that Mr. P.V. Nanavati, learned cousnel for the respondents relied upon a decision of the Supreme Court in the case of Lalit Popli Vs. Canara Bank, reported in AIR 2003 SC 1796, wherein in para 17 it is held as under:

"17. While exercising jurisdiction under

> ARticle 226 of the Constitution the High Court does not act as an appelalte authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication fo the case on meirts as an Appellate Authority."

On the facts of the present case, the petitioner has failed to point out that there was violation of principles of natural justice. Record speaks that reasonable opportunity was afforded to the petitioner.

8.0 In the case of Indian Iron and Steel Company Vs.Workmen, reported in (1958) I LLJ 260 the Supreme Court ruled that when a dispute arises, the industrial tribunal has the power to see whether the termination of services of workman is justified and to give proper relief. The tribunal cannot, however, act as a court of appeal and substitute its own judgement for that of the management. It will interfere:

(i) when there is want of good faith;

(ii) when there is victimisation or unfair labour practice;

(ii) when the management has been guilty of a basic error or violation of a principle of natural justice; and

(iv) when on the material the finding is compeltely baseless or perverse.

The norms underlying these formulations are: (a) the industrial worker must be placed in such a position that security of hisservice may not depend upon the caprice or arbitrary will of the employer; (b) industrial peace should be maintained; and (c) the industry should be efficiently managed. Applying the said principles to the facts of the case, no interference is called for in this petition.

9.0 In the result, I do not find any merits in the present petition. The petition is, therefore, rejected. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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